







Transcript of the Testimony of **Salvatore Reale**

October 12, 2016

James Sizer, Sr., Deceased, by and through heirs Dorothy
Sizer, et al. v. Officer Martha Cameron, et al.

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<p>IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION</p> <p>JAMES SIZER, SR., Deceased, § by and through heirs DOROTHY § SIZER, CAROLINE WOLFF, § and JAMES SIZER, JR., § Individually, §</p> <p>Plaintiffs, § CIVIL ACTION NO. § A15-CV-1143-SS</p> <p>v. § §</p> <p>OFFICERS MARTHA CAMERON § and S. REALE, Individually, § CITY OF AUSTIN, TEXAS, § §</p> <p>Defendants. §</p> <p>*****</p> <p>THE ORAL DEPOSITION OF</p> <p>CORPORAL SALVATORE REALE</p> <p>October 12, 2016</p> <p>*****</p> <p>ORAL DEPOSITION OF CORPORAL SALVATORE REALE produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above styled and numbered cause on October 12, 2016, from 9:38 a.m. to 12:01 p.m., before Sandra S. Givens, CSR, in and for the State of Texas, reported by machine shorthand method, at City Hall, 301 W. 2nd Street, 4th Floor, Austin, Texas, pursuant to the Federal Rules of Civil Procedure.</p> <p style="text-align: right;">Page 1</p>	<p style="text-align: center;">I N D E X</p> <p>Appearances ----- 2</p> <p>Exhibits ----- 3</p> <p>CORPORAL SALVATORE REALE</p> <p>Examination by Mr. Taylor ----- 5</p> <p>Changes and Signature ----- 108</p> <p>Reporter's Certification ----- 110</p> <p style="text-align: center;">E X H I B I T S</p> <p>NO. DESCRIPTION PAGE</p> <p>Exhibit 1 ----- 33</p> <p>Record of Corporal Reale's 3/6/15 Download of TASER Information (TASER user not identified)</p> <p>Exhibit 2 ----- 43</p> <p>DVD of Corporal Reale's DMAV</p> <p>Exhibit 3 ----- 43</p> <p>Corporal Reale's TCOLE Records of Training Courses Taken</p> <p>Exhibit 4 ----- 44</p> <p>Corporal Reale's 2013 - 2015 Classes or Update Records</p> <p>Exhibit 5 ----- 47</p> <p>Record of Corporal Reale's Various Training Courses 1989 - 2015</p> <p>Exhibit 6 ----- 52</p> <p>Screenshot of Corporal's Reale 3/9/15 Interview with SIU</p> <p>Exhibit 7 ----- 53</p> <p>DVD of Corporal Reale's 3/9/15 Interview with SIU (DVD Retained by Attorney)</p> <p style="text-align: right;">Page 3</p>
<p style="text-align: center;">A P P E A R A N C E S</p> <p>FOR THE PLAINTIFFS:</p> <p>Mr. Bobby R. Taylor Law Offices of Bobby R. Taylor 1709 E. Martin Luther King, Jr. Blvd. Austin, Texas 78702 (512) 476-4886 bobby@taylor-law.com</p> <p>FOR THE DEFENDANTS:</p> <p>Ms. Chris Edwards Assistant City Attorney Ms. Kim Ohrn Law Clerk City of Austin P.O. Box 1546 Austin, Texas 78767-1546 (512) 974-2419 chris.edwards@austintexas.gov</p> <p>ALSO PRESENT:</p> <p>Ms. Caroline Wolff Ms. Dorothy Sizer</p> <p style="text-align: right;">Page 2</p>	<p>Exhibit 8 ----- 53</p> <p>Transcript of Corporal Reale's 3/9/15 Interview with SIU</p> <p>Exhibit 9 ----- 53</p> <p>Transcript of Corporal Reale's 3/10/15 Interview with IA</p> <p>Exhibit 10 ----- 55</p> <p>Corporal Reale's 3/6/15 General Offense Hardcopy, Supplemental</p> <p>Exhibit 11 ----- 93</p> <p>APD Policy: Response to Resistance (PowerPoint)</p> <p>Exhibit 12 ----- 95</p> <p>U.S. Code, Title 42, Section 1986, Action for Neglect to Prevent (PowerPoint)</p> <p>Exhibit 13 ----- 96</p> <p>Duty to Stop Others (PowerPoint)</p> <p>Exhibit 14 ----- 97</p> <p>3 Keys to Understanding the "Reasonableness Standard" (PowerPoint)</p> <p>Exhibit 15 ----- 100</p> <p>DRRM Response to Resistance PowerPoint</p> <p style="text-align: right;">Page 4</p>

1 A Yes.

2 Q Okay. And as you approached him you said get

3 on the ground. Did he respond to you at any point?

4 A He said he was not going to get on the

5 ground.

6 Q He told you he was not going to get on the

7 ground. Is that your best recollection?

8 A According to my report, he was not going to

9 get on the ground, and then he said he couldn't get on

10 the ground.

11 Q And did he tell you why he couldn't get on

12 the ground?

13 A He said he was disabled.

14 Q And did you ask him any other questions at

15 that time?

16 A Your question is did I ask him any more

17 questions?

18 Q Yes. After he said he was disabled did you

19 ask him anything else?

20 A I don't think so.

21 Q Okay. Did he ever refuse to get on the

22 ground?

23 A He wouldn't get on the ground when I told him

24 to get on the ground.

25 Q Okay. And I guess my question is, you said

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1 here he refused, and I want to -- did he refuse, or did

2 he just not get on the ground, if there's a difference

3 to you?

4 A He refused to comply with my commands.

5 Q Okay. And after he refused, he says he was

6 disabled, did he describe anything about an inability

7 to get on the ground?

8 A No.

9 Q Did he describe anything about, "If I get on

10 the ground, I can't get up"?

11 A Yes.

12 Q Tell the jury about that.

13 A I'm reading what I wrote here. I think it's

14 in there. I don't see it in here. No. I don't, I

15 don't see where I wrote that in here. So I don't --

16 Q Okay. And what was his speech and demeanor

17 at that time?

18 A His speech seemed -- let me see if I wrote

19 that in here. It was, like, slurred. I considered his

20 speech was -- yeah, it seemed slurred.

21 Q And what did that reflect to you as a police

22 officer?

23 A He could be intoxicated.

24 Q And that came to your mind, didn't it?

25 A I don't remember if that came to my mind.

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1 Q Okay. Were you -- at that point when you

2 told him to get down you still had your lethal weapon

3 pointed at him?

4 A It was -- I know I had it in my hand. I

5 think I was pointing it at him.

6 Q Now, at that point did you know that other

7 officers were responding to this incident?

8 A Yes.

9 Q And you knew that Manley and at least one

10 other officer were in the area close to you; is that

11 right?

12 A I knew that one was up the street further

13 from me.

14 Q And you knew that Cameron was there with you,

15 didn't you?

16 A Yes.

17 Q So within very -- well, how did you know one

18 was up the street?

19 A Prior to -- or after I arrived I believe it

20 was Mark Manley, and we were going to shut the street

21 down to keep vehicular traffic from coming down the

22 street. So we were going to block off the street.

23 Q Okay. So you told this man -- you gave him

24 directions to get on the ground, and were those your

25 words, "get on the ground" or "get down," or what do

Page 63

1 you remember saying?

2 A Just from personal recollection, it was, "Get

3 on the ground."

4 Q Okay. And he did not follow those

5 directions, and you remember him responding to you

6 saying, "I'm disabled"?

7 A Yes. He did not get on the ground, and I

8 remember him saying he was disabled.

9 Q Did he threaten you in any manner or means?

10 A Verbally?

11 Q Any manner.

12 A I'm -- the threat in the totality of the

13 circumstance in that call where we're dealing with a

14 subject who says he's going to shoot his son, shots

15 being fired, we could not eliminate the possibility

16 that a weapon was going to be produced at that time.

17 Q Okay. But he didn't say he was going to

18 shoot police officers, did he?

19 A No.

20 Q He didn't say he was going to shoot you, did

21 he?

22 A No.

23 Q He did not threaten you, did he?

24 A The threat was there.

25 Q Okay. Did he have a weapon visible to you?

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16 (Pages 61 to 64)

1 A No.

2 Q This man was a very heavy-set man with a big

3 belly, wasn't he?

4 A He was a -- I'm saying about 200 pounds.

5 Q Okay. Big belly, if you knew?

6 A I don't. I don't remember that.

7 Q Did you see any signs of a weapon on him?

8 A I could not see a weapon.

9 Q Okay. And you don't remember whether he was

10 barefoot or not, but you knew you were at his

11 residence, didn't you?

12 A I knew I was where he was.

13 Q Okay. Did you see any signs that his son was

14 there?

15 A Could not see into the house.

16 Q I understand, but you said if his son was

17 there something about the threat involving his son; am

18 I correct?

19 A Correct.

20 Q Okay. Did you see any signs that his son was

21 there?

22 A Be specific. I mean --

23 Q Did you when you drove up, did you see a

24 vehicle or anything suggesting his son was at the

25 house?

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1 A I don't know what the son drives, and I don't

2 recall what vehicles were there. I don't recall

3 see -- there was not a vehicle in the driveway, but I

4 don't remember what vehicles were on the street, if

5 any.

6 Q What was the next thought that occurred or

7 next action that occurred out there?

8 A From what point?

9 Q From when you said get down and you say he

10 refused.

11 A When Officer Cameron was coming up from my

12 side.

13 Q Now, you were the first officer on scene; is

14 that right?

15 A Yes.

16 Q And you were the primary officer dealing with

17 him; is that correct?

18 A I was the first officer speaking with him.

19 Q And you were the one having the primary

20 conversations with him, weren't you?

21 A Yes.

22 Q Okay. And you saw Officer Cameron coming up

23 from the side. Describe to the jury what occurred

24 after that.

25 A Mr. Sizer refused to obey my commands to get

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1 on the ground. He also refused the commands of Officer

2 Cameron.

3 Q And what were her commands?

4 A That he was going to be tased if he didn't do

5 what we were asking him to do.

6 Q And you heard her say that?

7 A I heard her saying, "You need to get down on

8 the ground or you're going to get tased," something to

9 that effect.

10 Q And did you hear Mr. Sizer respond to Officer

11 Cameron?

12 A I know he -- what did he say? He said

13 something like, "Ohhh," or something like that.

14 Q Okay. Do you remember him telling her he

15 could not get on the ground?

16 A I remember that. I don't know if it was to

17 her or me.

18 Q Okay. And what occurred next after your best

19 recollection of these conversations?

20 A He refused to comply with our commands to get

21 on the ground.

22 Q Okay.

23 A And then he was tased.

24 Q Did you say anything to Cameron before she

25 tased him?

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1 A Yes.

2 Q And what did you say to her?

3 A From where I was I started to say to Officer

4 Cameron, "Go ahead and go with lethal coverage, I'll go

5 hands on."

6 Q You say you started to say that. Do you know

7 if you said that?

8 A No. Yeah. I -- yeah. I said that. What I

9 mean is I don't know, you know, what she heard, what

10 she didn't hear.

11 Q Okay. What did you say to Officer Cameron?

12 A "Go to lethal coverage, and I'll go hands

13 on."

14 Q And that was a direct -- a direction from you

15 to what you wanted her to do; is that correct?

16 A That was a option that was available to me

17 from my perspective.

18 Q So did you direct her to do it, or did you

19 give her an option?

20 A The incident was very fluid, and we had two

21 different vantage points or angles on Mr. Sizer. I

22 could see from my angle, and she could see from her

23 angle. This is a very fluid, developing incident.

24 What I was thinking I could do --

25 Q Let me stop you. Tell the jury what you were

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1 thinking you could do.

2 MS. EDWARDS: Objection. Let the
3 witness answer the question.

4 Q (By Mr. Taylor) What were you thinking you
5 could do?

6 A I was going to go with the option of hands
7 on.

8 Q Explain to the jury what that means.

9 A If I have lethal coverage, I felt that I
10 could go hands on and take him down to get him
11 controlled.

12 Q And "hands on" means you put your hands on
13 his body; is that correct?

14 A Yes.

15 Q And when you were thinking that were you
16 close enough to reach out and put hands on?

17 A I would have been -- I'm trying to remember
18 the exact or the approximate distance from him, but I
19 was close enough to where if I did that, I could get to
20 him.

21 Q Okay. And to put hands on, his hands were
22 both visible and up; is that correct?

23 A No. His hands were both visible, but when
24 you say "up," are you referring to this [indicating]?

25 Q No, sir.

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1 Q And was he doing anything at that point to
2 prevent you from gaining control of both of his hands
3 and taking him down to the ground?

4 A He wasn't, he wasn't -- no.

5 Q Okay. And he at that point was not doing
6 anything physically to resist you from going hands on,
7 was he?

8 A Other than not complying to my commands to
9 get on the ground voluntarily, no.

10 Q Okay. And he was not taking any aggressive
11 action toward Officer Cameron that you observed at that
12 time, was he?

13 A It takes no time at all to produce a weapon
14 from behind my waistband or out of my pocket, and he
15 was not complying to our commands. And this was a gun
16 call, a shots-fired call, and a threat-to-kill-his-son
17 call. So when you ask was he doing anything physical,
18 okay? He's not, he's not doing anything other than
19 standing there not complying, but it takes nothing more
20 than this [indicating] and we've got a different
21 situation.

22 Q Okay. Was he violent as far as you seeing
23 him? You standing there, was he violent toward you?

24 A He was not displaying violence at that time.

25 Q Okay. Was he trying to escape at that time?

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1 A Okay.

2 Q They were visible to you; is that right?

3 A Yes.

4 Q In fact, the truth as you remember is, he was
5 talking to APD 911, wasn't he?

6 A He was on the phone. I knew that.

7 Q Well, you didn't hear him tell you he was
8 talking to 911?

9 A I don't know if I knew that at that time or
10 learned that later that he was on the phone with 911.
11 I'm not sure on that.

12 Q Okay. But the record will reflect whether he
13 said "I'm talking to 911," right?

14 A Yeah.

15 Q And if he's talking to 911 and he told you
16 that, that would have been something that would have at
17 least been in your mind at the time you were deciding
18 what to do; is that right?

19 A It had no bearing as to who he was talking to
20 on the phone as to our situation in the driveway.

21 Q Okay. Describe to the jury what would have
22 entailed you going hands on with Mr. Sizer when you
23 thought about doing that.

24 A Hands on would have been controlling both of
25 his hands and taking him down to the ground.

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1 A No.

2 Q And was he threatening you or Officer Cameron
3 at that time?

4 A The threat was there because of the nature of
5 the call.

6 Q And how many -- how much time had passed from
7 the nature of the call when they first came through?

8 A From the time the calls came through --

9 Q Yes, sir.

10 A -- till we got there?

11 Q Yes, sir.

12 A I don't know.

13 Q Okay. So in your presence was he threatening
14 anybody other than his physical presence?

15 A He was a threat because of the nature of the,
16 the call, and the exigent circumstances at the time
17 were, do we have a victim inside that house that either
18 is dead or dying and needs our help?

19 Q Okay. So that was your, that was your
20 primary concern, whether there was a victim inside the
21 house who was dying or needed your help, was that
22 concern; is that --

23 A Yes. That is -- that was my concern.

24 Q And that was your primary concern at this
25 point; is that right?

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18 (Pages 69 to 72)

1 A It was one of the concerns.
 2 Q Well, you weren't worried about yourself,
 3 because you're getting ready to go hands on; am I
 4 right?
 5 A Of course I was worried about myself.
 6 Q Well, you didn't see a gun, did you?
 7 A I did not see a gun in his hands.
 8 MS. EDWARDS: Objection, asked and
 9 answered.
 10 Q (By Mr. Taylor) You were getting ready to
 11 grab both of his hands, were you not?
 12 A I was going to go hands on.
 13 Q And you were going to grab his hands with
 14 your hands; is that correct?
 15 A That was my intent, to secure his hands.
 16 Q And you didn't see anything by Mr. Sizer to
 17 change that intent, did you?
 18 A Clarify that for me.
 19 Q He didn't do anything to prevent you from
 20 going hands on.
 21 A He did not comply. I was going to go hands
 22 on, and then he was tased before I was able to go hands
 23 on.
 24 Q Okay. Now, when you said to Martha, "You go
 25 lethal, I'll go hands on," did she respond to you?

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1 A No.
 2 Q Do you know if she heard you?
 3 A I don't know if she heard me.
 4 Q Okay. And what did she then say, or what
 5 occurred next?
 6 A From what I recall, is, "TASER, TASER,
 7 TASER," and then the TASER deployed.
 8 Q And when she tased him what occurred?
 9 A He fell down.
 10 Q And when you heard her say "TASER, TASER,"
 11 what actions did you take?
 12 A When he fell down --
 13 Q Prior to him falling when you heard "TASER,
 14 TASER," did you move from where you were?
 15 A I'm not sure if I stood where I was or moved
 16 back. I don't, I don't remember. I don't remember the
 17 video.
 18 Q Do you remember whether you actually even
 19 stepped out of the line and stepped to the left, to
 20 your left?
 21 A I'd have to see the video to remember which
 22 way I went.
 23 Q Okay.
 24 A If I went any way.
 25 Q Did you at any point think about telling

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1 Martha, No, don't use the TASER?
 2 A No.
 3 Q Why?
 4 A From the -- where I was and where she was we
 5 had two different angles of what we can see and what we
 6 can't see, and we rely on each other to make good
 7 decisions on the best way to handle things in a very
 8 fluid call, as this was. What she sees gave her -- she
 9 determined tasing would be the best way to take this
 10 man down safely, and that's what she chose.
 11 Q Okay. I'm going to direct you to Exhibit
 12 No. 9, and this was the meeting between you and
 13 Masters, and I'm going to go to page 1495. 1495, and
 14 that's COA 001495, and I'm going to ask you, do you
 15 remember discussing with the detectives the description
 16 and the physical nature of Mr. Sizer as you saw him
 17 there?
 18 A Okay. Can I read this page, or --
 19 Q Yes, sir. Read that page.
 20 A -- is there any particular paragraph you --
 21 Q Yes, sir. Start at about -- go line about
 22 226.
 23 A How far would you like me to read down?
 24 Q Well, on line 226 you were asked, "Does he
 25 appear to be at all physically threatening or in the

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1 way he was standing, his demeanor, his posture? Was he
 2 threatening?" And what was your response?
 3 A Okay. You're saying on 226 that question is
 4 asked? Because that's not what I'm seeing.
 5 Q And in your response on --
 6 A My response is on 226. So Masters asked me,
 7 "How would you say the suspect - or the suspect that
 8 you encountered in the driveway was?" And I said, "He
 9 appeared to be on the phone. He was on the phone and
 10 he was just, you know, like he's kinda odd."
 11 Q Well, let's go back now. You skipped a
 12 sentence. The question to you, and I'm going to read
 13 it, starting at --
 14 A Where are you?
 15 Q -- 236. "Masters: Sixties?"
 16 A Wait, wait, wait. 236?
 17 Q Yes, sir. Let me --
 18 A Oh, I'm sorry. I was at 226. My apology.
 19 Q Okay.
 20 A Okay. Let me, let me go there.
 21 Q Start reading -- well, at 234 you said, "His
 22 age was in his 60s"; is that right?
 23 A Yes.
 24 Q And on 236 Masters says, "Did he appear to be
 25 at all physical - physically threatening or in the way

Page 76

1 he was standing, his demeanor, his posture? Was he
2 threatening?" And what was your response?

3 A "No, he wasn't, you know, defensive posture
4 at all. He was on the phone and in the one hand I
5 think - I think he's, like, talking like this here, um,
6 you know, I know there's a gun involved and I don't
7 know where it is."

8 Q Okay. So you did say he was not physically
9 threatening and he was, you say, no defensive posture
10 at all. That's what you said, right? So he was not
11 physically threatening as you approached him; is that
12 right?

13 A He was -- right.

14 Q Okay. And I want you to go to page 1496, and
15 am I correct what you say is that on page COA 1496,
16 line 267, you respond, "I had a visual control, visual
17 of his hands. Hands will kill you. I could see both
18 of them and I was in a position where I felt that if I
19 had lethal coverage over him, I can go hands on and I
20 can take this guy down to the ground. Uh, and I don't
21 know if he's got a gun back there." Is that correct?

22 A Yes.

23 Q Okay. And then on line 283 you state, "I
24 felt comfortable that if he did produce a gun, I was
25 already ready for that. I could see both his hands,

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1 am I right?

2 A I was giving him commands to get on the
3 ground, and he was not complying.

4 Q Okay. When was the last time you saw the
5 video?

6 A Whenever, when I was interviewed by -- I'm
7 not sure if it was SIU or Masters in IA.

8 Q Oh, so you haven't seen it since then?

9 A No.

10 Q Okay. I'm going to show you what's in the
11 record as Exhibit No. 1, and I assure you, other than
12 my miscues with trying to pull this up and all, you can
13 look at it, we can stop it, and I'm going to just let
14 you play it and then I'm going to go back and we'll
15 talk about a couple of things.

16 (Video segment played.)

17 Q Okay. You heard this man explain to you that
18 he can't get on the ground, "I'm physically disabled,"
19 didn't you?

20 A Yes.

21 Q You heard him say, "I'm physically disabled.
22 If I get on the ground, I cannot get up," didn't you?

23 A Yes.

24 Q You heard Martha say, "Get on the ground,"
25 and he says, "I can't. If I get on the ground, I will

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1 but they were never raised in a 'I'll give up'
2 position." Is that what you stated?

3 A Yes.

4 Q Okay. And I'm going to direct you over to
5 page COA 1499. You were asked at line 400, Masters
6 says, "Now, why did you direct her to that option once
7 you see her walking up with the TASER, you have lethal,
8 why did you direct her to switch to lethal and you go
9 hands on?" And what was your response?

10 A "I felt I was close enough to be able to get
11 him into cuffs."

12 Q Okay. And that was your opinion; is that
13 correct?

14 A Yes.

15 Q And it hasn't changed, has it?

16 A No.

17 Q Okay. You had some 25 years experience and
18 Martha had approximately 9; is that correct?

19 A Yes.

20 Q Okay. And your opinion was based upon your
21 conversations, because you'd been talking to this man
22 before she even got there, hadn't you?

23 A It was a very quick time before she got there
24 I think.

25 Q Well, I understand, but you'd been talking;

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1 not get up." You heard him say that two or three
2 times, didn't you?

3 A Yes.

4 Q Okay. Was there any question this man was
5 telling you he could not physically get down on the
6 ground?

7 MS. EDWARDS: Objection.

8 Q (By Mr. Taylor) In your mind, was there any
9 question at this time?

10 A We have heard every excuse in the book --

11 Q I understand.

12 A -- on the street. Okay. Just because a man
13 says "I can't" do something --

14 (Video briefly played.)

15 Q I'm sorry.

16 A Pause it while I answer the question.

17 Q Yes, sir. That's what I caught myself trying
18 to do. I apologize.

19 A We've heard every excuse in the book why
20 somebody can't do something --

21 Q Yes, sir.

22 A -- when we're giving them commands to do
23 something, and it takes but one split second for
24 somebody, anybody, man, woman, or child, to produce a
25 weapon, a handgun, and this call involved a handgun or

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20 (Pages 77 to 80)

1 because you're saying -- what I'm -- what I think
2 you're saying is, is he holding his fists up? Is he
3 pointing a weapon? Is he being this way or that way
4 towards me? No. He's not doing that, but I can't see
5 behind him, I can't see if there's a weapon, I can't
6 see in his pockets. Anything -- a weapon can be
7 produced so very fast. Mr. Taylor, that's what I'm
8 dealing with.

9 **Q And, sir, I understand that, but as I**
10 **remember your testimony was to the investigators, SIU,**
11 **was that you felt at that point you could contain him**
12 **by hands on; is that right?**

13 **A** I felt that I could take him down to the
14 ground and go hands on.

15 **Q And there was nothing that was done by**
16 **Mr. Sizer to change that opinion, was there?**

17 **A** What was -- not different, but I had another
18 officer that had another view of him, and what she sees
19 that I can't see, I don't know.

20 **Q Okay. Now, you --**

21 **A** So she took her action, which was an
22 appropriate action.

23 **Q Okay. And let me, let me back up.**

24 **(Video segment played.)**

25 **MR. TAYLOR:** Sandy, I'm going to

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1 ask that you record on the record what is being said
2 here, and then I'll question him about it. So I'm
3 going to go back to the video, sir, and I'm going to
4 play it with the understanding the court reporter is
5 going to be taking it down.

6 **MS. EDWARDS:** I'm going to object.
7 Sandy, can you clearly hear everything that's being
8 said on the video to be able to record it?

9 **THE REPORTER:** I guess it depends
10 on which portion it is, so I'll see. I don't usually
11 record videos.

12 **MR. TAYLOR:** I understand that.

13 **MS. EDWARDS:** I think you need to
14 get a certified court reporter to transcribe it who has
15 headphones and whatever equipment they use and can
16 replay it.

17 **MR. TAYLOR:** And Sandy, I'm going
18 to ask you to record what you can hear.

19 **MS. EDWARDS:** And I'm going to
20 object.

21 **MR. TAYLOR:** That's fine.

22 **THE WITNESS:** And I'm going to get
23 a glass of water, if that's okay with everybody.

24 **MS. EDWARDS:** Sure.

25 **(Video segment played.)**

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1 **CORPORAL REALE:** I'm not asking you, I'm
2 telling you. Get your hands where I can see
3 them and get on the ground. Get on the ground.
4 Get on the ground.

5 **MR. SIZER:** I can't.

6 **CORPORAL REALE:** Why can't you?

7 **MR. SIZER:** I'm physically disabled.

8 **CORPORAL REALE:** Okay. I'm going to --

9 **MR. SIZER:** I'm still talking to 911.

10 **CORPORAL REALE:** Okay. Okay.

11 **(Crosstalk)**

12 **OFFICER CAMERON:** Sir, I'm going to tase you if
13 you don't get on the ground, sir.

14 **MR. SIZER:** Ohhh.

15 **MS. EDWARDS:** I'm going to object.

16 **OFFICER CAMERON:** Okay? Please get on the
17 ground.

18 **MS. EDWARDS:** The court reporter is
19 shaking her head --

20 **MR. SIZER:** I can't.

21 **MS. EDWARDS:** -- that she can't get
22 all the cross talk.

23 **(Crosstalk)**

24 **MR. SIZER:** -- on the ground, I will not get
25 up.

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1 **OFFICER CAMERON:** TASER, TASER.

2 **CORPORAL REALE:** Okay.

3 **OFFICER CAMERON:** -- TASER.

4 **MR. SIZER:** No, no, no.

5 **MR. TAYLOR:** I note your objection.
6 Were you able to get any of that down?

7 **THE REPORTER:** I got some of it.

8 **MS. EDWARDS:** Did you get all of
9 it?

10 **THE REPORTER:** No.

11 **MR. TAYLOR:** That's fine. I'm
12 going to do it one more time with the understanding
13 that I understand that there's an objection.

14 **MS. EDWARDS:** So I don't
15 understand, what are you doing one more time for, what
16 purpose?

17 **MR. TAYLOR:** Because I want to do
18 it one more time for my purpose.

19 **MS. EDWARDS:** My question is, are
20 you asking her to record it again?

21 **MR. TAYLOR:** Yes. Yes. Yes. I'm
22 asking her to record what she can get.

23 **MS. EDWARDS:** Objection.

24 **MR. TAYLOR:** And this is starting
25 at 15:18.37 in Exhibit No. 1.

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22 (Pages 85 to 88)

1 (Video segment played.)
2 **CORPORAL REALE:** -- your hands where I can see
3 them and get on the ground. Get on the ground.
4 Get on the ground.
5 **MR. SIZER:** I can't.
6 **CORPORAL REALE:** Why can't you?
7 **MR. SIZER:** I'm physically disabled.
8 **CORPORAL REALE:** Okay. I'm going to --
9 **MR. SIZER:** I'm still talking to 911.
10 **CORPORAL REALE:** Okay. Okay.
11 (Crosstalk)
12 **OFFICER CAMERON:** Sir, I'm going to tase you if
13 you don't get on the ground, sir.
14 **MR. SIZER:** Ohhh.
15 **OFFICER CAMERON:** Okay? Please get on the
16 ground.
17 **MR. SIZER:** I can't.
18 **OFFICER CAMERON:** Why?
19 **CORPORAL REALE:** Martha, go, go lethal, I'll
20 go, I'll go hands on.
21 **MR. SIZER:** If I go on the ground, I will not
22 get up.
23 **OFFICER CAMERON:** TASER, TASER, TASER.
24 **CORPORAL REALE:** Okay.
25 **OFFICER CAMERON:** -- TASER.

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1 **MR. SIZER:** No, no, no.
2 **MR. TAYLOR:** Stopping at 15:19.16.
3 15:19.16.
4 **Q** Sir, I'm going to ask you one other thing
5 about this. Tell me if you appear to move to your left
6 and out of range, and as Martha says "TASER, TASER,
7 TASER" you say "Okay" and then move to your left and
8 back away from this incident.
9 (Video segment played.)
10 **Q** My question to you, sir, is whether you
11 observe yourself say "Okay" and then start moving four,
12 five steps to the left toward Martha and away from
13 wherever the direction of the TASER would have been.
14 **A** Yes. I started moving.
15 **Q** Okay. And what were you doing at that point?
16 **A** You know, I think I was getting out of the
17 way of the TASER deployment.
18 **Q** Okay. And when Martha said "TASER, TASER,
19 TASER," do you remember yourself saying "Okay"?
20 **A** I'm acknowledging I hear her she's going to
21 deploy the TASER.
22 **Q** That your saying okay, was that an indication
23 that you were agreeing to that?
24 **A** I was -- yes.
25 **Q** Okay. Did you have -- was there any point in

Page 90

1 time where you asked Mr. Sizer whether there was a gun
2 and where the gun was prior to him being tased?
3 **A** We'd have to play that again, but I don't
4 think I did ask him --
5 **Q** Okay.
6 **A** -- where the gun is.
7 **Q** And I assure you it was not in there, but I'm
8 just saying do you have an independent recollection of
9 it, and you don't, do you?
10 **A** No.
11 **Q** Okay. Was there anything done by Officer
12 Cameron in this situation that you felt was not within
13 the training of Austin Police Department?
14 **A** If I understand the question, you're asking
15 did she do anything wrong or that was outside of
16 departmental policy?
17 **Q** Yes, sir.
18 **A** No. I think she did everything right.
19 **Q** And do you believe the amount of force she
20 used was reasonable?
21 **A** Yes.
22 **Q** And is it your opinion she followed the
23 protocol, training, and procedures of the Austin Police
24 Department?
25 **A** Yes.

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1 **Q** Okay. Now, you were the first officer on
2 scene; is that correct?
3 **A** Yes.
4 **Q** And you were the senior officer in this
5 situation; is that correct?
6 **A** Yes.
7 **Q** And why is it that you were not the officer
8 assigned to do the write-up and the paperwork in this
9 situation?
10 **A** As we discussed earlier, the patrolmen are
11 the ones that are doing the bulk of the work. Now, as
12 the corporal, my job is to write my supplement, and as
13 the officers would take the what we call the front
14 sheet and the main portion of the report.
15 **Q** And is that routine for the Austin Police
16 Department?
17 **A** Yes.
18 **Q** So the case was literally assigned to her; is
19 that correct?
20 **A** I'm going to say yes, but, you know, I'm
21 pretty sure she was the one that did the front page.
22 **Q** Do you know whether she heard any of the
23 information that was being spoken from Mr. Sizer to you
24 prior to her tasing Mr. Sizer?
25 **A** Your question is did she hear what he was

Page 92

1 saying to me?

2 **Q Yes, sir.**

3 **A I can't answer for her.**

4 **Q Okay. But you were having conversations with**

5 **him, whatever the extent, prior to her arriving; is**

6 **that correct?**

7 **A I was talking with him --**

8 **Q Okay.**

9 **A -- before her arriving.**

10 **Q Has there been any disciplinary actions**

11 **toward anybody based on this incident of March 6th,**

12 **2015?**

13 **A No.**

14 **Q Has there been any retraining or reprimands**

15 **of anybody based on this tasing of Mr. Sizer on March**

16 **6, 2015?**

17 **A I am not aware of any.**

18 **Q Okay. And is it your professional -- is it**

19 **your opinion as her supervising officer that everything**

20 **she did was in accordance with APD and your training**

21 **and procedures with her?**

22 **A Yes.**

23 **Q Okay. I'm going to show you Exhibit No. 11.**

24 **(Exhibit No. 11 marked.)**

25 **Q Can you tell the jury what that is? And it's**

Page 93

1 **COA 2525, 2526. What do you understand that to be?**

2 **A Want me to read it?**

3 **Q Take a minute and read it. Yes, sir. I**

4 **apologize.**

5 **A Okay.**

6 **Q Okay. And what is this, in your**

7 **understanding, sir?**

8 **A This is part of our response to resistance**

9 **policy.**

10 **Q Okay. And in this particular situation when**

11 **you all responded in this case was there any concerns**

12 **given to the possible injury to Mr. Sizer based upon**

13 **him being tased?**

14 **A Say that again, please?**

15 **Q Yes, sir. Were you or Ms. Cameron concerned**

16 **about any possible injury to Mr. Sizer in addition to**

17 **the tasing?**

18 **A Were we concerned about injuring him?**

19 **Q Yes. Him falling, him being injured by being**

20 **tased. You know when you tase someone they're going to**

21 **fall down, right?**

22 **A We know when we tase somebody they're going**

23 **to have neuromuscular incapacitation.**

24 **Q And tell the jury what that means.**

25 **A Their muscles are going to lock up.**

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1 **Q And what's the expected result of that?**

2 **A They could fall.**

3 **Q Okay. And when they fall in a situation**

4 **where they fall forward or backwards, what do you**

5 **expect to be the parts of their body to impact on the**

6 **ground or the concrete or wherever they land?**

7 **A The TASER was designed to minimize injury to**

8 **both officers and subjects that we encounter that the**

9 **TASER will be deployed on. That's what it's designed**

10 **to do --**

11 **Q Yes, sir.**

12 **A -- is to limit the injury factor.**

13 **Q Okay.**

14 **A So your question is what did I think was**

15 **going to happen?**

16 **Q Yes, sir.**

17 **A Okay. He would have a muscular lockup and he**

18 **would fall down to the ground and we would cuff him.**

19 **Q Okay. And you knew he was on pavement at the**

20 **time this occurred, right?**

21 **A We were on the driveway. Yes.**

22 **Q Okay. I'm going to show you Exhibit No. 12.**

23 **(Exhibit No. 12 marked.)**

24 **Q I ask you if you can identify that, sir. have**

25 **you ever seen anything like that?**

Page 95

1 **A I'm not sure if I've read that before, sir.**

2 **Q Okay. It's COA 2809, and as you see at the**

3 **bottom under the little square, it says "TCLEOSE,"**

4 **T-C-L-E-O-S-E. Tell the jury what TCLEOSE is.**

5 **A Texas Combined Law Enforcement Association**

6 **something something.**

7 **Q Okay. So you're not personally familiar with**

8 **COA 2809; is that correct?**

9 **A I don't know that I have or have not read**

10 **that before.**

11 **Q Okay.**

12 **(Exhibit No. 13 marked.)**

13 **Q I'm going to show you exhibit COA 2494 and**

14 **ask you if you've ever seen that before, sir. Have you**

15 **ever seen that?**

16 **A I think I've read that before.**

17 **Q And what does that say to you, sir? What**

18 **does that tell you? What's your understanding of it?**

19 **A My understanding of it is if I see or**

20 **somebody, another officer, sees an officer that's doing**

21 **something that they shouldn't do, in excess -- in this**

22 **case, excessive force -- not in this case, but in what**

23 **they're saying here, excessive force, has the due**

24 **diligence to prevent that.**

25 **Q Okay. And you know that's the status of**

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24 (Pages 93 to 96)

1 APD's policies, certainly as of March 6, 2015 when this
 2 occurred; is that correct?
 3 A Yes.
 4 Q Okay. I'm going to show you Exhibit No. 14
 5 and ask you if you can look at that and tell me what
 6 you understand that to be, sir.
 7 (Exhibit No. 14 marked.)
 8 A Yes. I understand.
 9 Q And tell the jury what COA 2842 is and how
 10 you may be familiar with it.
 11 A This, this is, I believe, in our policy also.
 12 "Is the suspect an imminent threat to the officer or
 13 others? Is the suspect actively resisting or evading
 14 seizure? What is the severity of the crime at issue?"
 15 I believe these are all in our policy regarding the use
 16 of the TASER.
 17 Q Okay. Now, when Mr. Sizer is standing there
 18 before you on March 5th, 2015, was he an immediate
 19 threat to officers or others at that time?
 20 A Yes.
 21 Q And who was he a threat to?
 22 A Myself, Officer Cameron, and anybody else
 23 that was around.
 24 Q And the threat was based upon what you've
 25 already told this jury; is that correct?

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1 A And that would be, so that I'm clear?
 2 Q The fact that he could possibly have a weapon
 3 on his body or near him or somewhere.
 4 A Yes.
 5 Q But other than that, there's no other threat
 6 he made to you?
 7 A The threat, no other threat was verbalized by
 8 Mr. Sizer, but the threat was there.
 9 Q And please don't misunderstand me. I'm not
 10 downplaying the fact that a weapon was at play, but I'm
 11 just saying that was the threat we're talking about in
 12 this situation; is that right?
 13 A That a weapon could be produced at any
 14 moment.
 15 Q Okay. Was he actively resisting or evading
 16 seizure?
 17 A He was not actively resisting or evading
 18 seizure, but he was not complying to our commands so
 19 that we could be safe and get to the next step of this
 20 call, which was to see who was in the house and needed
 21 our attention, medical assistance.
 22 Q And did you have any knowledge other than
 23 what he told you about whether he had the ability to
 24 get on the ground?
 25 A Again, we've heard it all out here. When he

Page 98

1 says "I can't, I'm disabled," I can't take that as
 2 being fact. I can't, I can't -- I don't have the time
 3 or the luxury of time because of the type of call and
 4 the gun being involved.
 5 Q Well, but you had at least two officers
 6 either on scene or just down the street at this time,
 7 didn't you?
 8 A Yes.
 9 Q And both of them were fully armed, as were
 10 you; am I correct?
 11 A Yes, you are.
 12 Q And if something had happened, you'd already
 13 been told shots fired before you even arrived at the
 14 spot; am I correct?
 15 A Say that again?
 16 Q You'd already gotten a call saying three
 17 shots fired before you even saw Mr. Sizer the first
 18 time; am I correct?
 19 A That's correct.
 20 Q So the urgency was the fact that his son
 21 could be in there and his son could be injured or could
 22 be dead; am I correct?
 23 A That's not the only issue. That is a issue,
 24 and the other issue is this man Sizer in front of me
 25 with the potential to produce that weapon that was said

Page 99

1 to have been fired.
 2 Q Okay. Well, the reason I'm asking is you're
 3 saying time is a factor. If his son was already shot
 4 or dead, timing is not going to necessarily cause you
 5 to -- I'm sorry. Timing is not going to require you
 6 to do something quick -- strike that. Strike that.
 7 Okay.
 8 A I was going to ask you a question on that.
 9 Q What is the severity of the crime at issue at
 10 this point, sir?
 11 A The severity of this call and crime was
 12 we -- was the potential that this man's son was dead or
 13 dying from his -- from Mr. Sizer shooting him.
 14 Q Okay.
 15 (Exhibit No. 15 marked.)
 16 Q I'm going to show you Exhibit 15, which is
 17 COA -- which is 002430 and 2431, and ask you if you can
 18 take a minute and look at it. Take as much time as you
 19 need and tell me what you understand that to be.
 20 A Okay.
 21 Q Are you familiar with that?
 22 A Yes.
 23 Q Okay. Tell the jury what that is.
 24 A Well, we're looking at the response to
 25 resistance and some guidelines that guide us into how

Page 100

1 we respond to these levels of resistance.

2 **Q And can you tell the jury, looking on page 2,**

3 **what was the level of resistance, in your opinion, of**

4 **Mr. Sizer?**

5 A We, we had, we had passive resistance. He's

6 not, he's not charging anybody, he's not, he's not, you

7 know, in a defensive posture of raising his fists, but

8 we also could have preparatory resistance, which we've

9 seen many times before. People are gaining the courage

10 to go for the weapon. They're, they're talking,

11 they're getting themselves ready.

12 **Q Is it your --**

13 A So -- go ahead.

14 **Q Is it your testimony to this jury that you**

15 **felt you had preparatory resistance in this case?**

16 A It's my, it's my opinion that the -- that

17 Mr. Sizer was, was acting passively while he's talking

18 to us as far as he's, he's not, he's not complying, but

19 he's not charging me. But again, through my experience

20 as a police officer for all these years, it doesn't

21 take but a second to reach behind and, and produce that

22 weapon.

23 **Q I understand.**

24 A That may or may not be there.

25 **Q I understand.**

Page 101

1 A Okay? So in this situation, you know, I

2 think we have, we have both here. He could be

3 preparing mentally to go for the weapon.

4 **Q Did you --**

5 A I don't know that.

6 **Q Well --**

7 A I mean, I don't know what he's -- what's in

8 his head.

9 **Q I'm asking you, this is the training that's**

10 **provided to you --**

11 A Um-hm.

12 **Q -- as an officer; is that correct?**

13 A Right. And in our training we, we have to

14 take the whole situation.

15 **Q I understand.**

16 A Okay? If you pick it apart and have Monday

17 morning quarterbacking, which we don't have the luxury

18 of that or 20/20 hindsight on this, we have to assess

19 what we have in a matter of seconds and make a

20 determination that safely resolves the situation, and

21 that's what we did.

22 **Q And in this case it is your testimony that**

23 **what you have, based upon this exhibit, is passive**

24 **resistance and a possibility, in your mind, that it**

25 **could have been preparatory resistance; is that**

Page 102

1 **correct?**

2 A Yes.

3 **Q But it's clearly passive resistance from the**

4 **training you've received; is that right?**

5 A No. I would -- I'm not going to agree to

6 answer a yes --

7 **Q Okay.**

8 A -- to that.

9 **Q I'm sorry. You tell me what it is.**

10 A Okay. We have, we have a combination of

11 things here. Okay? I don't have this man lunging at

12 me or yelling at me or cussing at me, but I also have

13 the information of the nature of the call, and I can't

14 see behind this man's back and I can't get in his head

15 of what he is going to do or is not going to do.

16 So the preparatory resistance can be I'm

17 preparing, I'm getting myself ready to produce this

18 weapon while he's talking to me and talking to whoever

19 else is out there.

20 **Q Can you --**

21 A So he, he's appearing to be passive, but it

22 could very well be preparatory.

23 **Q Can you ever get inside any suspect's head**

24 **when you are confronting them and trying to decide what**

25 **to do?**

Page 103

1 A Again, we are only human beings.

2 **Q Yes.**

3 A And we do have training, and we do not have

4 the luxury of, of time in most cases, especially when

5 the call is as serious as this.

6 **Q So in every single case would you agree with**

7 **me that every case would have the possibility of**

8 **preparatory resistance?**

9 A Not every. I won't agree to every single

10 case.

11 **Q Okay.**

12 A But it's there.

13 **Q Okay.**

14 **MS. EDWARDS:** Bobby, it's near

15 noon. Do you think we're getting close?

16 **MR. TAYLOR:** Yes, ma'am. Yes,

17 ma'am.

18 **Q What is your understanding of how often**

19 **officers who use TASERS are supposed to be recertified**

20 **or retrained, sir?**

21 A I don't know how often they're supposed to be

22 retrained and recertified other than what we normally

23 do when we, when we go to the range to qualify with our

24 duty weapon.

25 **Q So you have no idea?**

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26 (Pages 101 to 104)